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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,148	04/14/2004	Joseph Bishop	005618-007	6376
21839 7590 11/23/2009 BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			EXAMINER CONLEY, FREDRICK C	
			ART UNIT 3673	PAPER NUMBER
			NOTIFICATION DATE 11/23/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary	Application No.	Applicant(s)	
	10/824,148	BISHOP, JOSEPH	
	Examiner	Art Unit	
	FREDRICK C. CONLEY	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

In view of the Appeal filed on 06/15/09, PROSECUTION IS HEREBY REOPENED. As set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Peter M. Cuomo/

Supervisory Patent Examiner, Art Unit 3673

The indicated allowability of claims 14 and 18 is withdrawn in view of the newly discovered reference(s) to Flynn. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 14, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 6,389,623 to Flynn et al.

Claims 1, 14, and 18, Flynn discloses a support structure for supporting a rear portion of a patient transport cart defined by a stretcher 10, comprising:

a main body assembly 182 comprising at least one vertical tubular member defined by frame member 210 that is capable of being vertically oriented and having a top, bottom, and middle section (fig. 1);

a wheel assembly comprising 214 at least one wheel, the wheel assembly attached to the bottom of the main body assembly by a wheel attaching means, wherein the at least one wheel is oriented to rotate about a horizontal axis while supporting the main body assembly; and

an attaching means defined by rotatable locking hinges 204 for attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart, wherein the attaching means comprises a hinged connection between the main body assembly and the member of the patient transport cart, said

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hinged connection oriented such that the support structure can be folded forward from the vertical rear proximate position to a horizontal position adjacent to an underside of the patient transport cart (fig. 1 & 9).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,526,611 to Flynn et al.

Claims 2 and 16, Flynn discloses the support structure, but is silent to the support structure being removably attachable by the main body attaching means. It is considered an obvious modification to construct a structural element to be removable and any hinge is capable of being removed with the right tools. Therefore, one having ordinary skill in the art at the time of the invention would have found it obvious to construct the hinge to have removable portions in order to easily repair or replace the main body assembly.

Claims 1-8, 12, 15-17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,662,388 to Fried et al.

Claims 1 and 15, Friel discloses a support structure, comprising:

a main body assembly 9 comprising at least one vertical tubular member and having a top, bottom, and middle section defined by a bore hole 18 extending throughout the middle of the tubular member,

a wheel assembly comprising at least one wheel 2, the wheel assembly attached to the bottom of the main body assembly by a wheel attaching means, wherein the at least one wheel is oriented to rotate about a horizontal axis while supporting the main body assembly, and

an attaching means defined by an attachment boom 20, attachment points 31, and a connector element 35, for attaching the main body assembly defined by a pump lifting device 9 to a member defined by a sheet 13 of a bed proximate the rear portion defined by the head end of the bed (fig. 2). It is well known that beds and stretchers alternatively described as a patient transport cart are known equivalents of supporting a patient in a prone position and a person of ordinary skill in the art would have recognized the interchangeability of the bed shown in Friel for the stretcher in the specification. Therefore it would have been obvious for one having ordinary skill in the art at the time of the invention to employ a stretcher in order to provide an alternative means for supporting the patient while in transport.

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With regards to claims 2 and 16, the support structure of Friel is removably attachable to the patient transport member 13 by the free ends of the connector element 35 such as an S-hook (col. 4 lines 38-45).

With regards to claims 3 and 17, wherein the main body attaching means comprises at least one support member defined by the connector element 35 having first and second ends, the support member being attached to the main body assembly at the first end defined by an attachment point and having a mating portion defined by an S-hook at the second end, wherein said mating portion is adapted to be inserted into a receiving means defined by a grommet 37 attached to a member defined by a sheet 13 of a patient transport and be removably secured therein by a securing means, such as a spring loaded closure of the mating portion (col. 5 lines 16-23).

With regards to claim 4, wherein the main body attaching means comprises two diagonally extending support members 35 as illustrated in figure 2 each having the mating portion 39 and being attached to the main body assembly defined by the lifting device 9 via the attachment boom 20 at the middle section defined by a bore hole 18 as illustrated in figure 2.

Claims 5-7, wherein the securing means of the mating portion includes an s-hook comprising a spring loaded retractable closure (col. 5 lines 16-17). Fried fails to disclose the closure comprising a button, removable pin, or clamp. The equivalency of buttons, pins, hooks, and clamps for providing a fastening means is well known and it would have been obvious for one having ordinary skill in the art at the time of the

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invention to employ a button, removable pin, or clamp in order to provide an alternate means for closure.

Claims 8 and 19, wherein the main body assembly comprises an upper member 11 and a lower member 9, said upper and lower members telescopically cooperating under control of a height adjustment means (col. 3 lines 1-13).

Claim 12, wherein the wheel assembly comprises two wheels attached to each other via a common member 3, the common member being attached to the bottom of the main body assembly.

Claims 9-11, 13, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,662,388 to Fried et al. in view of U.S. Pat. No. 2,127,309 to Rickard.

Claims 9 and 20, Fried discloses all of the Applicant's claimed limitations except for the height adjustment means having a knob connected to a threaded shaft. Rickard discloses a support structure having telescopic members adjusted through a knob 25 connected to a threaded shaft. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ an alternative height adjustment means such as a knob and threaded shaft in order to raise and lower the support of Fried.

Claim 10, wherein the height adjustment means further comprises a crank handle attached to the knob (fig. 3)(Rickard).

Claim 11, wherein the height adjustment means comprises a ratcheting type height adjustment (col. 1 lines 53-55). A ratchet is defined as a mechanism that engages sloping teeth of a wheel such as the mating gears 27 of Rickard therefore the mating gears provide a ratcheting type height adjustment.

Claim 13, Fried discloses all of the Applicant's claimed limitations except for the wheels rotatably connected through a swivel pin. Rickard discloses castors having pin portion extending upwardly into fittings (34,37) and swivelly connected (fig. 2)(col. 2 lines 18-20). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a swivel pin as taught by Rickard in order to maneuver the support of Fried.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is (571)272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PETER CUOMO can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/FREDRICK C CONLEY/
Primary Examiner, Art Unit 3673